

## REMARKS

Claims 1-22 were pending of which Claims 1, 4-8, 11, 12, and 15-22 were rejected, Claims 2, 3, 13, and 14 objected to, and Claims 9 and 10 indicated as allowable. Claims 9 and 12 have been amended, Claims 18-19 have been cancelled, and Claims 23-27 have been added. Claims 24 and 25 depend from Claim 9 and therefore should be allowable for at least the same reasons as Claim 9.

The amendment to Claim 9 improves grammar and broadens. New Claims 23-27 are supported, e.g., in Figs. 3-5 and supporting text and in the paragraph beginning on page 6, line 6. No new matter has been added.

Applicant notes that the status of the application in the Office Action Summary indicated that prosecution as to the merits is closed in accordance with the practice under *Ex parte Quale*. Applicant believes that this status is in error and requests correction.

### Claim Rejections – 35 U.S.C. §103

Claims 1, 4-8, 11, 12, and 15-22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Seaburn (6,084,662) (“Seaburn”). Applicant requests reconsideration.

Independent Claim 1 recites “means for positioning a sample held on said sample support, said reflective element, or both said sample held on said sample support and said reflective element within a collection range”. The Examiner noted that “Seaburn lacks the teaching of ... a means for positioning the sample support.” The Examiner stated “one would have to manually place the sample support in a position for detection of light to occur.”

Applicant believes the Examiner is not reading the claim element in its entirety. The claim element is not simply a “means for positioning the sample support” as the Examiner stated, but is a “means for positioning a sample held on said sample support, said reflective element, or both said sample held on said sample support and said reflective element within a collection range”. Thus, the means for positioning is capable of positioning the sample held on a sample support, the reflective element or both within the collection range.

Seaburn does not teach or suggest such a means for positioning nor is there a motivation provided to modify the teaching of Seaburn to include such a means for positioning. Consequently, for at least those reasons, Claim 1 is patentable over Seaburn.

Claims 4-8 and 23 depend from Claim 1 and are therefore patentable for at least the same reasons as Claim 1.

With regard to Independent Claim 11, the Examiner took Official Notice "that the use of optical elements such as lenses and apertures to change the position of light beams are old and well known in the art." Claim 11, however, recites more than simply changing the position of light beams. Claim 11 recites "at least one of said lens elements and said aperture stop are adjusted to alter a collection range to position a sample held on said sample support, said reflective element, or both said sample held on said sample support and said reflective element within said collection range, said light detector detects light reflected within said collection range."

As discussed above, Seaburn does not teach or suggest positioning the sample, the reflective element or both within collection range. Moreover, the Examiner's Office Notice does not include this element. Accordingly, for at least those reasons, Claim 11 is patentable over Seaburn. Claim 26 depends from Claim 11 and are therefore patentable for at least the same reasons as Claim 11.

Independent Claim 12 has been amended for clarity. Claim 12 recites "selectively configuring a collection range to include said sample, said reflective element or both said sample and said reflective element". As discussed above, Seaburn does not teach or suggest configuring a collection range to include the sample, the reflective element or both. Accordingly, for at least those reasons, Claim 12 is patentable over Seaburn. Claims 13-22 and 27 depend from Claim 12 and are patentable for at least the same reasons.

Claims 9 and 12 have been amended, Claims 18-19 have been cancelled, and Claims 23-27 added leaving Claims 1-17 and 20-27 pending. For the above reasons, Applicants respectfully request allowance of Claims 1-17 and 20-27. Should the Examiner have any questions concerning this response, the Examiner is invited to call the undersigned at (408) 982-8202.

**Via Express Mail Label No.  
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Respectfully submitted,



Michael J. Halbert  
Attorney for Applicants  
Reg. No. 40,633

SILICON VALLEY  
PATENT GROUP LLP  
2350 Mission College Blvd.  
Suite 360  
Santa Clara, CA 95054  
(408) 982-8200  
FAX (408) 982-8210